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No. 84-1154

In the Supreme Court of the United States

October Term, 1984

JACK P. QUINN
Petitioner

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,
also known as
STATE FARM INSURANCE COMPANY
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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CORPORATE PARTY'S AFFILIATIONS

Respondent State Farm Mutual Automobile Insurance Company's affiliates are State Farm Mutual Life Insurance Company, State Farm Fire and Casualty Company, State Farm General Insurance Company and State Farm Life Assurance Company. Respondent otherwise has no parent companies, subsidiaries (other than wholly-owned subsidiaries) or affiliates.

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RESPONDENT'S BRIEF IN OPPOSITION

MEMORANDUM IN OPPOSITION

This is a controversy involving petitioner, a Kansas citizen, who brought a direct action against Respondent, the insuror of a Kansas citizen insured, in the Federal District Court for the District of Kansas. The insured was not named as a party to the action. Petitioner sought actual damages of $1,500.00 and punitive damages of $15,000.00. Petitioner also requested the District Court to revoke respondent's license to sell insurance in Kansas and to terminate all of respondent's insurance policies presently in

force. No federal question jurisdiction was stated in petitioner's complaint and therefore diversity of citizenship jurisdiction had to exist in order for the district court to have subject matter jurisdiction, under the circumstances of this case.

Respondent asserts the following grounds in opposition to the granting of the instant petition for writ of certiorari:

1. Subject matter jurisdiction was clearly lacking in the Federal District Court.

28 U.S.C. 1332(c) provides in relevant part,

> . . . That in any direct action against the insuror of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party defendant, such insuror shall be deemed a citizen of the state of which the insured is a citizen, as well as of any state by which the insuror has been incorporated and of the state where it has its principal place of business.

Petitioner did bring a direct action against respondent liability insuror, without joining the insured as a party defendant. And as such, respondent is deemed to be a citizen of the state of which the insured is a citizen. Therefore, diversity of citizenship is lacking because petitioner is a Kansas citizen and respondent is also deemed a Kansas citizen.

Congress can require such diversity of citizenship because Congress created the Federal District Courts

by statute and may accordingly limit the District Courts jurisdiction by statute. This line of reasoning has long been embedded in case law. *Sheldon v. Sill*, 8 How 441, (1850).

Petitioner has not asserted any conflicts of decisions among the Federal Court of Appeals, nor has petitioner asserted that his dismissal from Kansas Federal District Court is in conflict with any decisions of this Court. No Federal question is involved, and it is in fact well settled that a Federal District Court is a court of limited jurisdiction subject to the jurisdictional grants of Congress. Further, petitioner could have obtained a trial by jury by bringing an action in state court.

In short, petitioner was not unconstitutionally denied access to the Federal Courts because petitioner's claim was within the realm of proper congressional limitations on the jurisdiction of the federal district courts.

2. Petitioner's claim fails other subject matter jurisdiction requirements.

Petitioner's claim of $1,500.00 in actual damages and $15,000.00 in punitive damages fails to satisfy the $10,000.00 requirement of 28 U.S.C. 1332(a). In Kansas, to justify an award of punitive damages against the defendant, a plaintiff must show that defendant's conduct was malicious, vindictive, oppressive, fraudulent or willful and wanton disregard of the other's rights. *Modern Air Conditioning Inc., v Cinderella Homes, Inc.*, 226 Kan. 70, 596 P.2d 816

(1979). Petitioner's claim of punitive damages against respondent fails to satisfy the jurisdictional amount because petitioner failed to allege any conduct by respondent which would justify an award of punitive damages.

Additionally, the Kansas Federal District Court lacks jurisdiction to grant petitioner's requested relief of revoking respondent's license to sell insurance in Kansas and to terminate all insurance policies of respondent presently in force. The licensure and regulation of insurance companies is a matter reserved to the states by the Tenth Amendment to the United States Constitution. Licensure and regulation of insurance companies in Kansas is controlled by the Commissioner of Insurance pursuant to the Kansas Insurance Code, K.S.A. 40-101 *et seq.* The power to revoke respondent's license to sell insurance in Kansas is administrative and rests with the Commissioner of Insurance of the State of Kansas and not the Kansas Federal District Court.

As is readily apparent, the Kansas Federal District Court lacks subject matter jurisdiction for reasons of no federal question, lack of diversity of citizenship, failure of jurisdictional amount, and inability to grant requested relief.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully Submitted,

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